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BACON & THOMAS

007/009

Serial Number 10/680,426

REMARKS

Reconsideration of the application is respectfully requested on the grounds that the shape change taught by U.S. Patent No. 6,530,935 (Wensel) has nothing to do with body temperature. To the contrary the retrieval coil of Wensel operates under entirely different principles than the claimed invention.

In Wensel, the coil is flattened by being placed in a sheath or introducer. The introducer is pushed *through* the obstruction to be removed, and then the coil is moved out of the sheath so that it can expand into a retrieval coil. This is not how the claimed invention operates. Instead, the claimed invention is not a coil at all until the temperature of the coil is raised above body temperature. This allows the "coil" to be moved past the obstruction without having to stay within the sheath 2 (see Fig. 1), and without having to be pushed through the obstruction. The device only becomes a "coil" when it has passed the obstruction.

It is true that Figs. 10a and 10b and col. 4, lines 56-61 of Wensel mention transition to a coil shape upon application of electric current. However, even this passage does not suggest the invention since there is no suggestion that the transition occurs upon heating to just above body temperature. To the contrary, the transition occurs upon application of electric current rather than changing the temperature of the irrigation fluid, and thus the transition temperature does not need to be near body temperature.

As a result, the device of Wensel and the claimed device differ in the following respects:

Wensel:

- device must be inside introducer as it is moved past blood clot or transition must be in response to application of electric current;
- temperature has no effect on whether device is coiled or uncoiled—only the position of the device within or out of the introducer or the application of electric current has an effect.

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Claimed

- device is uncoiled even outside the introducer or sheath so that it can easily be moved past obstruction without the introducer or sheath;
- device is coiled only when past obstruction, upon introduction of fluid that is warmer than body temperature.


The Examiner appears to believe that the device of Wensel inherently has a transition temperature above body temperature because it may be made of the same material as the device of the claimed invention, namely Nitinol. However, Nitinol can have a wide range of transition temperatures, depending on the nickel to iron ratio in the Nitinol, and there is no possible need for a transition temperature just above body temperature is the shape change is activated by internal electrical current or simply removing the device from an introducer.

Because the Wensel patent does not disclose or suggest a transition temperature just above body temperature, as claimed, it is respectfully submitted that the Wensel patent does not anticipate the claimed invention, and withdrawal of the rejection of all of the claims under 35 USC §102(e) is respectfully requested.

Having thus overcome each of the rejections made in the Official Action, withdrawal of the rejections and expedited passage of the application to issue is requested.

Respectfully submitted,

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